

AN ORDINANCE

AN ORDINANCE OF THE HARRIS COUNTY BOARD OF COMMISSIONERS TO AMEND THE CODE OF ORDINANCES OF HARRIS COUNTY SO AS TO CREATE "ARTICLE VI -UNSAFE BUILDINGS" OF CHAPTER 5 - PUBLIC SAFETY, HEALTH AND SANITATION OF THE CODE; TO REVISE AND ADOPT THE STATE AUTHORIZED BUILDING PROGRAM TO COMBAT THE EFFECTS OF NUISANCE PROPERTIES WITHIN UNINCORPORATED HARRIS COUNTY; TO ESTABLISH FINDINGS THAT REQUISITE CONDITIONS EXIST WITHIN UNINCORPORATED HARRIS COUNTY; TO WARRANT IMPLEMENTATION OF SAID PROGRAM; TO REQUIRE COMPLIANCE WITH STATE STANDARDS; TO PROVIDE NOTICE TO PERSONS AFFECTED; TO PROVIDE FOR SEVERABILITY; TO PROVIDE PENALTIES; TO REPEAL CONFLICTING ORDINANCES; TO FIX AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, O.C.G.A. § 41-2-7, et seq. allows counties to combat the negative impacts of nuisances by adopting local ordinances to control nuisance properties and structures by allowing repair, removal and demolition of same;

WHEREAS, the General Assembly of the State of Georgia, effective July 1, 2002, amended O.C.G.A. § 41-2-7 et seq. to provide an additional nuisance abatement procedure in accord with applicable law, and further has amended such statutory scheme to provide for a more comprehensive approach to the abatement of nuisance structures; and

WHEREAS, it is the desire of the Board of Commissioners of Harris County, Georgia, as the duly elected governing authority of the County, to adopt and implement the abatement procedure established within O.C.G.A. § 41-2-7 et seq.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF HARRIS COUNTY, GEORGIA AS FOLLOWS:

SECTION 1: NAME

That the Code of Ordinances of Harris County, Georgia, is hereby amended by adding thereto "ARTICLE VI - UNSAFE BUILDINGS" OF CHAPTER 5 - PUBLIC SAFETY, HEALTH AND SANITATION to read as follows:

"ARTICLE VI. UNSAFE BUILDINGS

Sec. 5-150. Findings of the existence of nuisance structures.

- (a) The Harris County Board of Commissioners, as the governing authority of the county, finds and declares that within the unincorporated limits of the county there

is the existence or occupancy of dwellings or other buildings or structures which are unfit for human habitation or for commercial, industrial, or business occupancy or use and are not in compliance with applicable state minimum standard codes as adopted by ordinance or operation of law or any optional building, fire, life safety, or other codes relative to the safe use of real property and real property improvements adopted by ordinance to be in force within the county; or general nuisance law and which constitute a hazard to the health, safety, and welfare of the people of the county and the state; and that the public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures.

- (b) It is further found and declared that within the unincorporated limits of the county where there is in existence a condition or use of real estate which renders adjacent real estate unsafe or inimical to safe human habitation, such use is dangerous and injurious to the health, safety, and welfare of the people of the county and a public necessity exists for the repair of such condition or the cessation of such use which renders the adjacent real estate unsafe or inimical to safe human habitation. Moreover, the Harris County Board of Commissioners find that there exist in the county dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and which are not in compliance with applicable codes; which have defects increasing the hazards of fire, accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; or other conditions exist rendering such dwellings, buildings or structure unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the county, or vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed. Finally, it is the intent of the governing authority to invoke the procedures hereafter codified for private property which constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions to those persons residing or working in the vicinity of the property.

Sec. 5-151. Nuisance abatement procedures.

- (a) *Continued use of other laws and ordinances.* It is the intent of the Board of Commissioners that nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the county to enforce any provisions of any local enabling act, charter, ordinance or regulation nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition to and supplemental to the powers conferred by any other law or ordinance, legislation, or regulation.

(b) ***Definitions.***

Applicable codes means (a) any optional housing or abatement standard provided in Chapter 2 of Title 8 of the O.C.G.A. as adopted by ordinance or operation of law, or other property maintenance standards as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property; (b) any fire or life safety code as provided for in Chapter 2 of Title 25 of the O.C.G.A.; and (c) any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in O.C.G.A. Chapter 2 of Title 8 after October 1 provided that such building or minimum standard codes for real property improvements shall be deemed to mean those building or minimum standard codes in existence at the time such real property improvements were constructed unless otherwise provided by law.

Closing means causing a dwelling, building, or structure to be vacated and secured against unauthorized entry.

Court or Magistrate Court means the Magistrate Court of Harris County, Georgia or any other court of competent jurisdiction.

Drug crime means an act which is a violation of O.C.G.A. Article 2 of Chapter 13 of Title 16, known as the Georgia Controlled Substances Act.

Dwellings, buildings, or structures means any building or structure or part thereof used and occupied for human habitation or commercial, industrial, or business uses, or intended to be so used, and includes any outbuilding or accessory structures, improvements, and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. The term "dwellings, buildings, or structures" shall not mean or include any farm building or structure located on a farm, or any agricultural facility or other building or structure used for the production, growing, raising, harvesting, storage, or processing of crops, livestock, poultry, or other farm products.

Governing authority means the Board of Commissioners of Harris County, Georgia.

Interested party means:

- (1) Owner;

- (2) Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the title standards of the State Bar of Georgia;
- (3) Those parties having filed a notice in accordance with O.C.G.A. § 48-3-9;
- (4) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the county or records maintained in the county courthouse or by the clerk of court. Interested party shall not include the holder of the benefit or burden of any easement or right-of-way whose interest is properly recorded which interest shall remain unaffected; and
- (5) Persons in possession of said property and premises.

Owner means the holder of the title in fee simple and every mortgagee of record.

Public authority means any member of a governing authority, any housing authority officer, or any officer who is in charge of any department or branch of the government of the municipality, county, or state relating to health, fire, or building regulations or to other activities concerning dwellings, buildings, or structures in the county or municipality.

Public officer means the officer or officers who are authorized by O.C.G.A. § 41-2-7, § 41-2-8 and §§ 41-2-9 through 41-2-17 and by this article adopted under § 41-2-7, § 41-2-8, and §§ 41-2-9 through 41-2-17 to exercise the powers prescribed by this article or any agent of such officer or officers.

Repair means altering or improving a dwelling, building, or structure so as to bring the structure into compliance with the applicable codes in the jurisdiction where the property is located and the cleaning or removal of debris, trash, and other materials present and accumulated which create a health or safety hazard in or about any dwelling, building, or structure.

Resident means any person residing in the jurisdiction where the property is located on or after the date on which the alleged nuisance arose.

- (c) ***Duties of owners; appointment of public officer; procedures for determining premises to be unsafe or unhealthful.***

- (1) It is the duty of the owner of every dwelling, building, structure, or property within the jurisdiction to construct and maintain such dwelling, building, structure, or property in conformance with applicable codes in force within the county, or such ordinances which regulate and prohibit activities on property and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure or property in violation of such codes or ordinances;
 - (2) The Board of Commissioners of Harris County hereby appoint and designate the Director of Community Development and his designee(s) as the public officer(s) to exercise the powers prescribed by this article.
- (d) ***Other remedies not precluded.***
- (1) The public officers designated herein may issue citations for violations of state minimum standard codes, optional building, fire, life safety, and other codes adopted by ordinance, and conditions creating a public health hazard or general nuisance, and may seek to enforce such citation in courts of competent jurisdiction prior to issuing a complaint in rem as provided in this article.
 - (2) Nothing in this article shall be construed to impair or limit in any way the power of the county to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Sec. 5-152. Procedures; notice; hearing; appeal.

- (a) Whenever a request is filed with the public officer by a public authority or by at least five (5) residents of the unincorporated limits of Harris County charging that any dwelling, building, or structure is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer shall make an investigation or inspection of the specific dwelling, building, structure, or property.
 - (1) The public officer if unable to gain permission to enter a structure for making an inspection hereunder may apply for an administrative search warrant from the Magistrate Court of Harris County authorizing the public officer to enter the property and dwelling to make an inspection as provided herein.

- (2) If the officer's investigation or inspection identifies that any dwelling, building, structure, or property is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer may issue a complaint in rem against the lot, tract, or parcel of real property on which such dwelling, building, or structure is situated or where such public health hazard or general nuisance exists, the public officer is authorized to file a complaint in the Magistrate Court of Harris County or other court of competent jurisdiction, and shall cause a summons and a copy of the complaint to be served on the interested parties in such dwelling, building, or structure.
- (3) The complaint shall identify the subject real property by appropriate street address and official tax map reference subject to the latest deed/plat of record; identify the interested parties; state with particularity the factual basis for the action; and contain a statement of the action sought by the public officer to abate the alleged nuisance. The summons shall notify the interested parties that a hearing will be held before the Magistrate Court of Harris County, Georgia, at a date and time certain and at a place within the county where the property is located. Such hearing shall be held not less than fifteen (15) days nor more than forty-five (45) days after the filing of said complaint in court. The interested parties shall have the right to file an answer to the complaint and to appear in person or by attorney and offer testimony at the time and place fixed for hearing.
- (b) If after such notice and hearing, the Magistrate Court of Harris County determines that the dwelling, building, or structure in question is unfit for human habitation or is unfit for its current commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the Magistrate Court shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the interested parties that have answered the complaint or appeared at the hearing an order:

- (1) If the repair, alteration, or improvement of the said dwelling, building, or structure can be made at a reasonable cost in relation to the present value of the dwelling, building, or structure, requiring the owner, within the time specified in the order, to repair, alter, or improve such dwelling, building, or structure so as to bring it into full compliance with the applicable codes relevant to the cited violation and, if applicable, to secure the structure so that it cannot be used in connection with the commission of drug crimes;
 - (2) If the repair, alteration, or improvement of the said dwelling, building, or structure in order to bring it into full compliance with applicable codes relevant to the cited violations cannot be made at a reasonable cost in relation to the present value of the dwelling, building, or structure, requiring the owner, within the time specified in the order, to demolish and remove such dwelling, building, or structure and all debris from the property;
 - (3) For purposes of this article, the Magistrate Court of Harris County shall make its determination of reasonable cost in relation to the present value of the dwelling, building or structure without consideration of the value of the land on which the structure is situated; provided, however; that costs of the preparation necessary to repair, alter, or improve a structure may be considered. Income and financial status of the owner shall not be factored in the court's determination. The present value of the structure and the costs of repair, alteration, or improvement may be established by affidavits of real estate appraisers with a Georgia appraiser classification as provided in Chapter 39A of Title 31, of the O.C.G.A., the fair market value as determined by the Tax Assessor of Harris County, qualified building contractors, or qualified building inspectors without actual testimony presented. Costs of repair, alteration, or improvement of the structure shall be the cost necessary to bring the structure into compliance with the applicable codes relevant to the cited violations in force in the jurisdiction.
- (c) If the owner fails to comply with an order to repair or demolish the dwelling, building or structure, the public officer may cause such dwelling, building, or structure to be repaired, altered, or improved, or to be vacated and closed, or demolished. Such abatement shall commence within two hundred seventy (270) days after the expiration of time specified in the order for abatement by the owner. Any time during which such action is prohibited by a court order issued pursuant to O.C.G.A. § 41-2-13 or any other equitable relief granted by the court

of competent jurisdiction shall not be counted toward the two hundred seventy (270) days in which such abatement action must commence.

The public officer shall cause to be posted on the main entrance of the dwelling, building or structure a placard with the following words:

“This building is unfit for human habitation or commercial, industrial, or business use and does not comply with the applicable codes or has been ordered secured to prevent its use and connection with drug crimes or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful.”

- (d) If the public officer has the structure demolished, reasonable effort shall be made to salvage reusable materials for credit against the cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of the demolition and removal of the structure, and proper records shall be kept showing application of sales proceeds. Any such sale of salvaged materials may be made without the necessity of public advertisement and bid. The public officer and the county are relieved of any and all liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials; and
- (e) The amount of the cost of demolition, including all court costs, appraisal fees and administrative costs incurred by the county or its employee, and all other costs necessarily associated with the abatement action, including restoration to grade of the real property after demolition, shall be a lien against the real property upon which such cost was incurred.
 - (1) The lien provided for in subsection (e) of this section shall attach to the real property upon the filing of a certified copy of the order requiring repair, closure or demolition in the office of the clerk of superior court of the county and shall relate back to the date of the filing of the lis pendens notice required under subsection (d) of section 14-264. The clerk of superior court shall record and index such certified copy of the order in the deed records of the county and enter the lien on the general execution docket. The lien shall be superior to all other liens on the property, except liens for taxes to which the lien shall be inferior, and shall continue in force until paid.
 - (2) Upon final determination of costs, fees and expenses incurred in accordance with this chapter, the public officer responsible for

enforcement actions in accordance with this chapter shall transmit to the Tax Commissioner of Harris County, a statement of the total amount due and secured by said lien, together with copies of all notices provided to interested parties. The statement of the public officer shall be transmitted within ninety (90) days of completion of the repairs, demolition or closure. It shall be the duty of the Tax Commissioner of Harris County or his designee, whose duties include the collection of Harris County taxes, to collect the amount of the lien using methods available for collecting real property ad valorem taxes, including specifically O.C.G.A. Tit. 48, Ch. 4 provided, however, that the limitation of O.C.G.A. § 48-4-78 which requires twelve (12) months of delinquency before commencing a tax foreclosure shall not apply. The county or its employee shall remit the amount collected to the governing authority of the county.

(3) Enforcement of liens pursuant to this article may be initiated at any time following receipt by the county or its employee of the final determination of costs in accordance with this article. The unpaid lien amount shall bear interest and penalties from and after the date of final determination of costs in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes. An enforcement proceeding pursuant to O.C.G.A. § 48-4-78 for delinquent ad valorem taxes may include all amounts due under this article.

(4) The redemption amount of any enforcement proceeding pursuant to this section shall be the full amount of costs as finally determined in accordance with this section together with interest, penalties and costs incurred by the Board of Commissioners of Harris County in the enforcement of such lien. Redemption of property from the lien may be made in accordance with the provisions of O.C.G.A. §§ 48-4-80 and 48-4-81.

(f) Where the abatement action does not commence in the Superior Court of Harris County, review of a court order of the Magistrate Court of Harris County requiring the repair, alteration, improvement, or demolition of a dwelling, building, or structure shall be by direct appeal to the Superior Court of Harris County under O.C.G.A. § 5-3-29.

Sec. 5-153. Standards; powers; service of complaints.

(a) The public officer may determine, under existing ordinances, that a dwelling, building, or structure is unfit for human habitation or is unfit for its current

commercial, industrial, or business use if he/she finds that conditions exist in such building, dwelling, or structure which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, or structure; of the occupants of neighborhood dwelling, buildings, or structures; or of other residents of the county. Such conditions may include the following (without limiting the generality of the foregoing):

- (1) Defects therein increasing the hazards of fire, accidents or other calamities;
- (2) Lack of adequate ventilation, light, or sanitary facilities;
- (3) Dilapidation;
- (4) Disrepair;
- (5) Structural defects;
- (6) Uncleanliness; and
- (7) Other additional standards which may from time to time be adopted and referenced herein by ordinance amendment.

The public officer may determine, under existing ordinances, that a dwelling, building, or structure is vacant, dilapidated, and being used in connection with the commission of drug crimes based upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.

- (b) The public officer(s) designated in this article shall have such powers as may be necessary or convenient to carry out the purposes of this ordinance, including the following powers:

- (1) To investigate the dwelling conditions in the county in order to determine which dwellings, building, or structures therein are unfit for human habitation or are unfit for current commercial, industrial, or business use or are vacant, dilapidated, and being used in connection with the commission of drug crimes;
- (2) To administer oaths and affirmations, to examine witnesses, and to receive evidence;

- (3) To enter upon premises for the purpose of making examinations; provided, however, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (4) To appoint and fix the duties of such officers, agents, and employees as he or she deems necessary to carry out the purposes of the ordinance; and
- (5) To delegate any of his or her functions and powers under the ordinance to such officers and agents as he or she may designate.

(c) ***Service of complaints.***

- (1) Complaints issued by a public officer pursuant to this article shall be served in the following manner. At least fourteen (14) days prior to the date of the hearing, the public officer shall mail copies of the complaint by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identity and address are reasonably ascertainable. Copies of the complaint shall also be mailed by first class mail to the attention of the occupants of the property, if any, and shall be posted on the property within three (3) business days of filing the complaint and at least fourteen (14) days prior to the date of the hearing.
- (2) For interested parties whose mailing address is unknown, a notice stating the date, time and place of the hearing shall be published in the newspaper in which the sheriff's advertisements appear in Harris County once a week for two (2) consecutive weeks prior to the hearing.

- (d) A notice of lis pendens shall be filed in the Office of the Clerk of Superior Court if Harris County in which the dwelling, building, or structure is located at the time of filing the complaint in the appropriate court. Such notice shall have the same force and effect as other lis pendens notices provided by law.

- (e) As provided by O.C.G.A. § 41-2-13, any person affected by an order issued by the public officer may petition to the superior court for an injunction restraining the public officer from carrying out the provisions of the order and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause; provided, however, that such person shall present such petition to the court within fifteen (15) days of the posting and service of the order of the public officer. De novo hearings shall be had by the court on petitions within twenty (20) days. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may

require; provided, however, that it shall not be necessary to file bond in any amount before obtaining a temporary injunction under this Code section.

- (f) Orders and other filings made subsequent to service of the initial complaint and hearing shall be served in the manner provided in this section on any interested party who answers the complaint or appears at the hearing. Any interested party who fails to answer or appear at the hearing shall be deemed to have waived all further notice in the proceedings.”

SECTION 2: PREAMBLE

The preamble to this ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

SECTION 3: UNCONSTITUTIONALITY

All parts, portions, sections, paragraphs, sentences, clauses, and phrases of this Ordinance are each hereby declared to be severable and if any such part, portion, section, paragraph, sentence, clause, or phrase of this Ordinance shall be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such invalidity shall not affect any remaining parts, portions, sections, paragraphs, sentences, clauses, or phrases thereof and the Board of Commissioners of Harris County hereby declare that had they known that any such provision was or would be invalid, they would not have adopted that portion or part of the Ordinance but would have nevertheless adopted the remaining portions thereof.

SECTION 4:

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 5:

This ordinance after adoption by the Council and upon approval by the Board of Commissioners of Harris County shall become effective immediately.

INTRODUCED AND FIRST READING SEPTEMBER 16, 2014

SECOND READING AND ADOPTED/REJECTED OCTOBER 7, 2014

APPROVED/DISAPPROVED _____

HARRIS COUNTY BOARD OF COMMISSIONERS

J. Harry Lange, Chairman

Becky Langston, Commissioner

Joey M. Loudermilk, Commissioner

Jim Woods, Commissioner

ATTEST:

Nancy D. McMichael, County Clerk